IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-01-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No.1088 of 2001

Venkatathasalu Naidu ... Petitioner

-vs-

K.G.Shanthi ... Respondent

Criminal Revision filed against the order passed by the learned Judicial Magistrate, Palacode in C.M.P.No.633 of 2001 in C.M.P.No.2706 of 1999 in M.C.No.59 of 1987 on the file of the Judicial Magistrate, Dharmapuri, dated 15.02.2001.

For petitioner : Mr.K.Selvarangan
For respondent : Mr.A.Siurajudeen
Amicus Curiae

O R D E R

This Criminal Revision is directed against the order, dated 15.02.2001 made in C.M.P.No.633 of 2001 in C.M.P.No.2706 of 1999 on the file of the Judicial Magistrate, Palacode.

2. The petitioner herein is the respondent before the trial court. The respondent herein, had filed the C.M.P, seeking maintenance, stating that the petitioner herein, being her husband had neglected to maintain her.

3. According to the respondent, the petitioner herein married her, as per the Hindu religious custom and rituals on 15.12.1985, at Chinnathirupathi, Venkatachalapathy Temple, Hosur, with the consent of their parents. Due to the said wedlock, a daughter by name, Revathi was born to the respondent through the petitioner. After the birth of the child, according to the respondent, the petitioner herein demanded dowry and due to the non-compliance of his demand, the respondent and the child were sent to the respondent's parent house on 20.10.1987. According to the respondent, the petitioner had been neglecting the respondent, hence she filed M.C.No.59 of 1987 before the Judicial Magistrate, Dharmapuri. The petitioner herein defended the case, stating that the respondent was not his legally wedded wife. According to him, he had intimacy with her, but

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his wife was one Narayanamma, who died in the year 1984 and got two sons through the said Narayanamma. He totally denied the alleged marriage between himself and the respondent, that was said to have taken place on 15.12.1985. Learned Judicial Magistrate, after the trial, had dismissed the claim of the respondent herein. Aggrieved by which, she preferred Review in Review Petition No.36/97, before the learned III Additional Sessions Judge, Dharmapuri. The learned judge, after hearing both sides and considering the evidence on record, allowed the review petition. As per the finding of the said appellate court, Narayanamma, the first wife of the petitioner herein died in the year 1984, prior to his marriage with the respondent herein. Holding the respondent, the legally wedded wife of the revision petitioner, learned III Additional Sessions Judge, directed the petitioner herein to pay a monthly maintenance of Rs.200/- in favour of the respondent herein.

4. It is seen that the revision petitioner had filed a suit in O.S.No.97/ 99 before the District Munsif Court, Thenkanikottai, seeking declaration that he was not the husband of the respondent herein and obtained an exparte decree, dated 12.11.2000. Based on the exparte decree, he filed the petition in C.M.P.No.2706 of 1999 before the District Munsif – cum – Judicial Magistrate, Palakode, against the respondent herein, not to execute the maintenance decree passed by the Learned III Additional Sessions Judge, Dharmpuri in her favour. In the certified copy of the impugned order, it has been wrongly stated by the court below that the respondent herein as the petitioner and the petitioner herein as the respondent, though the said C.M.P was filed only by the revision petitioner herein and the same was dismissed by the District Munsif – cum – Judicial Magistrate, Palakode, by order, dated 15.02.2001.

5. The III Additional Sessions Judge, by his order, dated 09.03.1999, made in Review Petition No.36/97 has categorically held that the respondent herein is the legally wedded wife of the revision petitioner. The revision petitioner's first wife Narayanamma died in the year 1984 and subsequently he married the respondent herein. Therefore, the defence raised by the petitioner that he had only illegal intimacy with the respondent cannot be sustainable in law. On a perusal of the judgment rendered by the learned III Additional Sessions Judge, Dharmapuri, I could find no error or infirmity in holding that the respondent is the legally wedded wife of the revision petitioner and only a meager amount was awarded as maintenance by the said court. The revision petitioner, without paying the maintenance amount to the respondent herein, had filed the suit in O.S.No.97/99 before the District Munsif, Thenkanikottai and obtained an exparte decree, dated 13.11.2000.

6. On the facts and circumstances, I am of the considered view that the exparte decree obtained by the revision petitioner, would not deprive the right of the respondent and the learned Judicial Magistrate, Palakode, by his order, dated 15.02.2001 made in C.M.P.No.2706 of 1999 has rightly dismissed the petition, filed by the revision petitioner and directed him

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to pay the maintenance in the hearing date 01.03.2001. It is seen that the revision petitioner has filed this criminal revision on trivial grounds, so as to deprive the right of maintenance, which is legally available to the respondent. Therefore, I could find no merit in the criminal revision and the same is liable to be dismissed.

7. In the result, the Criminal Revision Petition is dismissed and the revision petitioner is directed to pay the arrears of maintenance, within three months from the date of receipt of the copy of the order and also to pay regular maintenance, as per the order of the learned III Additional Sessions Judge, Dharmapuri, made in Review Petition No.36/97, dated 09.03.1999.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Judicial Magistrate, Palacode.
2. -Do- Thro' The Chief Judicial Magistrate,
   Dharmapuri @ Krishnagiri.
3. The Judicial Magistrate, Dharmapuri.
4. -Do-'Thro' The Chief Judicial Magistrate,
   Dharmapuri at Krishnagiri.
5. The III Additional Sessions Judge,
   Dharmapuri.
6. -Do-Thro' The Principal Sessions Judge,
   Dharmapuri.
7. The Public Prosecutor
   High Court of Madras, Chennai.

1 cc To Mr.K.Selvarangan, Advocate, SR.2199.

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RVL 08.06.2007

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